

BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING FOR THE STATE OF HARYANA, FOR GOODS AND SERVICES TAX, PANCHKULA, VANIJYA BHAWAN, PLOT NO. I-3, SECTOR-5, PANCHKULA-134151 (HARYANA)

Order under Section 101 of the Central goods and Services Tax Act, 2017/ the Haryana Goods and Services Tax Act, 2017

The present appeal has been preferred by M/s Khera Trading Company situated at Sanoli Road, Near Govind Tobacco Factory, Panipat, Haryana-132103 ('Appellant') against the Advance Ruling No. HAR/HAAR/R/2018-19/09 Dated 30.08.2018 passed in their application dated 04.06.2018.

BRIEF FACTS OF THE CASE

2. The Appellant is *inter alia* engaged in the distribution of various dairy and non-dairy products and are registered with the jurisdictional GST authorities vide GSTIN 06AOEPK0998K1ZK. The goods "Cooking Cream" sold by the appellant under the name 'Cooking Delite' is a proprietary food consisting of Water, Edible Vegetable Fat (hydrogenated palm kernel oil), Milk Solid, Sugar along with premixes of emulsifiers and stabilizers. It is ideal for use in truffles, soups, sauces, gravies and all types of cuisines.

2.1 The impugned good comprises of 26 per cent edible oil (hydrogenated palm kernel oil) to which other ingredients such as milk solids, sugar and premixes are added, thus, forming a mixture/preparation of vegetable oil. The composition of the product is tabulated as under:

Name of Ingredient/additive	Ratio
Water	63.50%
Edible Vegetable fat	26%
Milk Solids	4%
Sugar	1%
Premix(emulsifiers, stabilizers, acidity regulators and preservatives)	5.5%

2.2 The process employed for manufacture of the Product is as under:

Step 1 Sugar and water are mixed in a container (container 1) to form a sugar syrup. Milk crême/ vanilla flavour are added to the syrup so formed.

Step 2 Hydrogenated vegetable palm kernel oil is mixed with emulsifier and stabilizers in another container (container 2).

Step 3 The mixture in container 1 and 2 are mixed at a high speed and then heated at a temperature of 75 degree Centigrade to 80 degree Centigrade.

Step 4 The resultant material is subject to pasteurization at a

temperature of 75 degree centigrade to 50 degree centigrade.

Step 5 After pasteurization, mixture is passed through plate heat exchanger and thereafter homogenised for proper blending.

Step 6 The mixture is then stored in aging/ finishing tank where it is brought down to a temperature of 50 degree centigrade. After the temperature falls, the mixture is transferred to filling machine where it is filled in 200 ml and 500 ml pouches. These pouches are sealed and packed in an outer carton weighing 12 kg to 15 kg.

3. The contention of the appellant was that since "cooking cream" contains 26% edible oil along with some other ingredients, it forms a mixture/preparation of vegetable oil and that it is classifiable under chapter heading 1517 as "edible mixture or preparations of animal or vegetable fats or oils or fractions of different fats or oils of this chapter, other than edible fats or oils or their fractions of heading 1516". Hence, the appellant contended that this product is chargeable to 5% IGST under S.No.89 of Schedule-I to Notification No.1/2017-Integrated Tax.

4. Based on the above submissions, the appellant raised the following question on which advance ruling was sought.

"Whether the product 'cooking cream' is classifiable under chapter heading 1517 [S No 89 of Schedule-1 of Notification No 1/2017-Integrated Tax (Rate) dated June 28,2017, attracting IGST @ 5% / {S.No.89 of Schedule-I of Notification No.01/2017 Central Tax (Rate) dated 28.06.17 attracting CGST @ 2.5%}/ {S.No.89 of Schedule-I of Notification No 35/ST-2 attracting SGST @ 2.5%}."

5. Comments of the concerned officer u/s 98(1) OF THE CGST/HGST ACT, 2017

The Deputy Excise & Taxation Commissioner (ST), Panipat, vide letter No 5342 dt.20.07.18, submitted the requisite comments on the above question raised by the appellant stating therein that as per the reading of heading 1517, it is apparent that all edible mixtures of preparations of vegetable fat or vegetable oil or fraction of different vegetable fats or vegetable oils fall under this head, that the appellants submission makes them believe that it must fall under heading 1517.

Decision of Authority for Advance Ruling Haryana:

6. Advance Ruling under Section 98 of the CGST/ HGST Act, 2017 was pronounced as under:

6.1 The impugned item, i.e. non-diary cooking cream, does not merit classification under heading 1517 of the First Schedule to the Customs Tariff Act, 1975. Rather the same is classifiable under chapter heading 2106 of the schedule to the Customs Tariff Act, 1975 and chargeable to IGST @ 18%, CGST @9% and SGST @9%, as specified under S. NO. 23 of Schedule-III of Notification No. 1/2017-Integrataaed Tax (Rate) dated June 28, 2017. Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017 and of Notification No. 35/ST-2 under State Tax.

Submissions made in the Appeal, by the Appellant:

7. The Authority in its Impugned Ruling has failed to take note of the additional submissions furnished and the factum of personal hearing on August 14, 2018. It apparently seems that the Authority did not bother to take into consideration the submissions advanced vide additional submissions and during the course of hearing.

7.1 In the case of *Dharampal Satyapal Limited vs. DCCE, 2015 (320) ELT 3 (SC)*, the Apex Court explaining the concept and contours of principles of natural justice, observed that principles of natural justice include the following: (i) rule against bias, i.e. *nemo judex in cause sua*; (ii) opportunity of being heard, i.e. *audi alteram partem*; (iii) passing of a reasoned order. These principles or attributes are natural or fundamental to the exercise of judicial powers.

7.2 The principle of *audi alteram partem*, i.e. right to be heard, forms part of the set of principles of natural justice, indispensable in exercise of the judicial authority. The principle must be applied even in cases where the same has not been expressly provided for in the enactment.

7.3 From the above, it is clear that the Impugned Ruling stands in stark violation to the well-established principles of natural justice. Accordingly, the Impugned Ruling is liable to be set aside and classification adopted by the Appellant accepted.

8. The First Schedule to the Customs Tariff Act is divided into XXI Sections which are in turn divided into 98 Chapters. The dominant constituent in impugned good is vegetable oil. Hence, Chapter 15 and Chapter 21 covering 'edible mixture or preparation of vegetable oils' arise for consideration in the present instance.

8.1 In the present case, the Appellant seeks to classify impugned good under Heading 1517 whereas the Authority vide its Impugned Ruling has classified the same under Heading 2106. It is pertinent to extract each of the above headings for ascertaining their scope and determining the classification of impugned good.

Chapter 15	
Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes	
1517	Margarine; Edible mixture or preparation of animal or vegetable fats or oils or of fractions of different fats or oils of this Chapter, other than edible fats or oils or their fractions of heading 1516
1517 10	- Margarine, excluding liquid margarine
1517 10 10	- Of animal origin
1517 10 10	- <i>Of vegetable origin</i>
1517 10 21	- Edible grade
1517 10 22	- Linoxyn
1517 10 29	- Other
1517 90	- <i>Other :</i>
1517 90 10	- Sal fat (processed or refined)
1517 90 30	- Imitation lard of animal origin
1517 90 40	- Imitation lard of vegetable origin
1517 90 90	- Other

Chapter 21	
Miscellaneous edible preparations	
2106	Food preparations not elsewhere specified or included
2106 10 00	- Protein concentrates and textured substances
2106 90	- <i>Other:</i>
	--- Soft drink concentrates
2106 90 11	---- Sharbat
2106 90 19	---- Other
2106 90 20	--- Pan Masala
2106 90 30	--- Betel nut product known as "Supari"
2106 90 40	--- Sugar syrups containing added flavouring or colouring matter, not elsewhere specified or included; lactose syrup; glucose syrup and malto dextrin syrup
2106 90 50	--- Compound preparations for making non-alcoholic beverages
2106 90 60	--- Food flavouring material
2106 90 70	--- Churna for pan
2106 90 80	--- Custard powder
	--- <i>Other:</i>
2106 90 91	---- Diabetic foods
2106 90 92	---- Sterilized or pasteurized millstone
2106 90 99	---- Other

8.2 The Appellant contends that impugned good merits classification under Tariff Item 1517 90 90 bearing description 'Other'. It is a residuary entry which

is provided under Heading 1517. Therefore, in order to classify under the aforesaid Tariff Item, the product must qualify under Heading 1517.

8.3 The Authority in the Impugned Ruling has held that impugned good is classifiable under Heading 2106. It is submitted that the relevant Tariff item under heading 2106 is 2106 90 99 bearing description 'Other' which is a four-dash entry covered under triple-dash entry 'Other'. The triple-dash entry is further covered under Sub-heading 2106 90 bearing description 'Other', which is a single-dash entry covered under Heading 2106. Therefore, the impugned good must answer to the description of goods mentioned against Heading 2106 in order to merit classification under Tariff item 2106 90 99.

9. The impugned goods are generally referred to in the market as 'Cooking Delite'. It is prepared using Ultra Heat Treatment (UHT) under which a product is given powerful heat treatment to kill all micro-organisms and deactivate enzymes. It is done to increase the shelf life of the product.

9.1 Impugned good is primarily based on vegetable oil (hydrogenated palm kernel oil) which constitutes almost 26 percent of the total Product. It forms the main ingredient to which other ingredients such as milk, sugar and premixes (consisting of stabilizers, emulsifiers etc.) are added. All these ingredients are emulsified together in water to make an edible preparation based on vegetable oil.

9.2 The essential character to impugned good is provided by vegetable fat without which it will not achieve its character of fat emulsion. Accordingly, the product is a preparation of vegetable fat classifiable under Heading 1517 which covers edible mixtures or preparations of vegetable fats or oils or of fractions of different fats or oils of this chapter. The relevant extract of this Heading is reproduced as under:

"Margarine; edible mixtures or preparations of animal or vegetable fats or oils of fractions of different fats or oils of this chapter, other than edible fats or oils or their fractions of heading 1516"

9.3 It is pertinent to note that classification under Heading 1517 can be made subject to the condition that the product does not fall under Heading 1516. In other words, Heading 1517 is a residuary heading. In order to classify goods under Heading 1517, they must specifically fall out of Heading 1516.

9.4 The Heading 1516 covers vegetable fats or oils that have been subjected to refining processes such as hydrogenation etc., but not further prepared. In other words, the Heading covers only those goods which continue to remain

animal or vegetable fats and oils and their fractions after processing. On the other hand, processed vegetable fats and oils that have been further prepared, will fall outside the purview of this heading.

9.5 In the instant case, the Product had undergone several processes beyond the scope of Heading 1516 and hence, fall outside the purview thereof.

9.6 The above view of the Appellant is supported by the Explanatory Notes appended to the HSN. Before discussing the same, it is essential to discuss the relevance of the HSN.

9.7 In the case of **CCE v. Wood Craft Products Limited, 1995 (77) ELT 23 (SC)**, the Apex Court observed that the HSN Explanatory Notes serve as a safe guide for ascertainment of meaning of a term used in the Tariff Schedule in case of doubt. The relevant extract has been reproduced as under:

“We are of the view that the Tribunal as well as the High Court fell into the error of overlooking the fact that the structure of the Central Excise Tariff is based on the internationally accepted nomenclature found in the HSN and, therefore, any dispute relating to tariff classification must, as far as possible, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself.”

9.8 In the case of **Reckitt Benckiser (India) Limited. v. Commissioner, Commercial Taxes, 2015 (7) SCC 126**, the Apex Court held that when the taxation statute is aligned with the HSN codes, then, necessarily the interpretation has to be based on the HSN code, as available in the Customs Act. The judgment has been relied upon in the case of **Parisons Food Private Limited v. Joint Commissioner of Commercial Taxes, 2018 (11) GSTL 44 (Ker.)**.

9.9 WCO’s Explanatory Notes to HSN [Sixth edition (2017), refer page III-1516-2] (HSN Explanatory Notes) provide that Heading 1516 includes products obtained from processes such hydrogenation, re-esterification etc. even if they are deodorized or subsequently subjected to similar refining process. **However, it excludes processed fats and oils that undergo chemical modification for the purposes of preparation of food.** Relevant extract of the HSN Explanatory Notes is as under:

“The heading includes the products as described above, even if they have a waxy character and even if they have been subsequently deodorized or subjected to similar refining processes, and whether or not they can be used

directly as food. But it excludes hydrogenated etc. fats and oils and their fractions which have undergone such further preparation for food purposes as texturation (modification of the texture or crystalline structure) (Heading 1517)”

9.10 It is submitted that the HSN Explanatory Notes clarify that heading excludes those processed fats or oils that have undergone a change in texture or crystalline structure.

9.11 In the present instance, impugned good is prepared by mixing various ingredients (sugar, milk solids and various premixes) in edible vegetable fat with vegetable fat serving as main constituent and base. It is an emulsion of vegetable fat in water to which other ingredients such as sugar, milk solids and flavours are added to provide the right taste. In addition to these, it contains stabilisers, thickeners and emulsifiers. Thus, the processed oil (hydrogenated palm kernel oil) has been subjected to processes such as emulsification which has caused a change in its character and quality. Accordingly, it is excluded from the Heading 1516.

10. Appellant has submitted that margarine is specifically covered under Heading 1517.

10.1 The Appellant submitted that impugned good is similar to margarine insofar as it is a preparation of vegetable oil in the nature of an emulsion of water-in-oil type and it resembles a regular cream which, like butter, is a dairy product. Similar to margarine which imitated butter by using vegetable fat instead of dairy fat, the impugned product imitates cream by using vegetable fat instead of dairy fat.

10.2 The Appellant further placed reliance upon the case of **Alva Sugar Agency v. State of Kerela, 2011 (272) ELT 649 (SC)** in which the following characteristics of margarine were discussed:

- *Margarine is used as substitute for butter (dairy product) specially in bakery products. In the instant case, impugned good is used as a substitute for dairy cream (dairy product) for use in soups, gravies etc.*
- *Margarine is prepared from refined and/or hydrogenated oils of sunflower, soyabean, cotton seed, palmoline, palm, sesame oils, vegetable oils, salt, permitted emulsifiers and stabilizers. In other words, the vegetable oil is present in maximum percentage. Thus, it is regarded as a preparation of vegetable oil and fractions thereof.*

- *Margarine is not consumed directly i.e. in the form in which it is available in the market or used for normal cooking as other oils like coconut, sunflower, etc., rather it is used for preparing bakery items consumed.*

10.2.1 Impugned good is prepared by mixing various ingredients in hydrogenated palm kernel oil. Out of all the ingredients, vegetable oil is present in maximum percentage of 26 per cent. Although 63.50 per cent water is also present, it is added solely for the purpose of emulsifying all the ingredients. Emulsification is specifically permitted for the products of Heading 1517 and vegetable oil remains the core ingredient of impugned good.

10.2.2 Likewise, impugned good is not consumed directly but after adding in soups, gravies as an extra dressing in various food preparations to give a creamy taste.

10.3 It is concluded from above that where margarine is referred to as 'imitation butter' and classified under Heading 1517, impugned good manufactured by the Appellant can be referred to as 'imitation cream' which is a preparation of vegetable oils / fats. Thus, impugned good is classifiable under Heading 1517.

10.4 The Appellant placed reliance upon the case of ***Parisons Foods Private Limited v. Joint Commissioner of Commercial Taxes, TS-13-HC-2018(KER)-VAT*** wherein the assessee was engaged in manufacture of 'bakery shortening', a product derived from a preparation of mixture of hydrogenated vegetable oils. In the aforesaid case filed a clarification regarding the correct classification of the product with the Clarification Authorities under Kerala Value Added Tax Act, 2003. The Authorities held that the product was correctly classifiable under Heading 1517 covering edible mixture or preparations of animal or vegetable fats or oils. The High Court upheld the above clarification on the ground that bakery shortening is prepared by mixing together various vegetable oils which provide its essential character. Thus, it constituted a preparation of hydrogenated vegetable oils.

10.5 In the light of above, it is submitted that impugned good is akin to 'bakery shortening / margarine' as it is essentially prepared by mixing other ingredients/additives in hydrogenated vegetable oil. The oil is the main ingredient and gives impugned good its essential character.

11. The Appellant submitted that Heading 1517 covers preparations of vegetable fats. Some of such vegetable fat-based preparations such as

margarine are actually low cost substitutes for dairy products such as butter. Thus, it is evident that Heading 1517 covers substitutes of dairy products that are made by emulsifying vegetable fat in water within its ambit. In other words, 'Dairy Analogues' made from vegetable/animal fats are covered under Heading 1517.

11.1 Appellant submitted that a dairy product is a preparation of or derived from nothing but milk. Hence, impugned good cannot be called a cream under the FSS Act. However, a non-dairy substitute for a dairy cream prepared by imitating the constitution thereof by using vegetable oil, vegetable fat, skimmed milk powder etc. can be called a cream analogue, connoting that it is similar to cream. As submitted above, Heading 1517 covers preparation of vegetable fats or oils such as margarine etc., that are substitute of various dairy products. Impugned good being a non-dairy product is prepared using the same ingredients and qualifies as a cream analogue.

12. In the case of *Shree Gopal Vanaspati Limited v. CC, 2014 (310) ELT 308 (Tri-Del.)*, the classification of bakery shortening was under dispute. The assessee proposed the correct classification of the product under Heading 1516, however, the revenue classified the product under Heading 1517. The Tribunal observed that the shortenings were produced by further working up of vegetable fats by way of emulsification in texture resulting in tenderizing effect in finished products. Accordingly, the product was classifiable under Heading 1517.

12.1 US Customs Cross Ruling NY C81464 dealt with classification of vegetable fat spread, consisting of 69 percent vegetable oil (a mixture of rapeseed and palm), 28 percent reconstituted buttermilk, 1.7 percent salt and balance ingredients such as emulsifiers, flavourings, vitamins A and D, colours. It was held that the product was classifiable under HTS 1517 90 90.

12.2 In **US Customs Cross Ruling HQ 964557**, the classification of Primrose / Flax Oil Capsules was under consideration. The capsules are manufactured by encapsulation and processing Primrose and Flax Oil. The product was held to be classifiable under HS 1517 as the above processing lead to a change in the existing characteristics of the product and formation of an altogether new product.

12.3 In the view of the aforesaid submissions, impugned good is excludible from Heading 1516 and correctly classifiable under Heading 1517.

13. The appellant has contended that Impugned good is not classifiable under Heading 2106 in view of the following:

13.1 Heading 2106 is the last Heading under Chapter 21 of the First Schedule to the Customs Tariff Act. A bare perusal of the title of Chapter 21 denotes that the products covered thereunder are miscellaneous edible preparations. The term 'miscellaneous' refers to items gathered or considered together which are of various types or from different sources. Therefore, there is no common thread running through the Headings, Sub-headings and tariff items covered under this Chapter.

13.2 The description to Heading 2106 is '**Food preparations not elsewhere specified or included**'. The title makes it plain and clear that the items covered thereunder are foods preparations which are not covered under any other Heading. The description of goods against Heading 2106 employs the terms 'specified' and 'included'. While the term 'specify' means to identify clearly and definitely, the term 'include' means to comprise or contain as part of a whole. Further, the two expressions are joined by the term 'or', which denotes that the conditions comprised therein are disjunctive in nature.

13.3 From the above, it follows that where species are not specifically mentioned but are covered under the genus inscribed under some other Heading, the species will not merit classification under Heading 2106. Therefore, goods which are neither specifically nor impliedly covered under any other Heading alone are to be covered under Heading 2106.

13.4 In the case of **CCE v. Maharshi Ayurveda Corporation Limited, 2006 (193) ELT 10 (SC)**, the product under consideration was herbonic tonic, a mixture of assorted vegetarian and dry fruits and seeds which could be consumed as such. The assessee sought to classify the products under Heading 2008 whereas the revenue sought to classify the product under Heading 2106. The Apex Court observed that product was included under Heading 2008, hence Heading 2106 automatically became inapplicable.

13.5 In the case of **CC v. Abott Healthcare Private Limited, 2015 (328) ELT 129 (Tri-Mum.)**, the product under consideration was 'Mama's Best Premium Chocolate', a nutritional powder. The importer classified under tariff item 1901 90 90 bearing description 'Other' as against revenue's classification under tariff item 2106 90 00 bearing description 'Other'. The Tribunal after considering the nature of goods and HSN Explanatory Notes, noted that the imported goods were classifiable under Heading 1901. It further held that

Heading 2106 is a residuary entry. Thus, once goods are classifiable under a particular Heading, the same cannot be classified under Heading 2106.

13.6 In the case of *Agrotech Foods Limited v. CC, 2017 (337) ELT 436 (Tri-Mum.)*, the product under consideration was “Act-II Microwave Popcorn” which was ready-to-use popcorn mixed with butter, required to be microwaved before consumption. The assessee claimed classification under Heading 2008 as ‘Edible parts of plants, otherwise prepared or preserved’, whereas the revenue sought to classify it under Tariff item 2106 90 00. The Tribunal opined that the goods are classifiable under Heading 2008. HSN Explanatory Notes as well as Chapter Notes under Customs Tariff Act to Chapter 21 talk primarily about products which are preparations not elsewhere specified or included. Therefore, if the goods are classifiable under Heading 2008, it will automatically cancel any considerations in favour of Heading 2106.

13.7 Therefore, the test to determine whether a product is classifiable under Heading 2106 is to check if it is not classifiable under any other Heading under the First Schedule of the Customs Tariff Act.

13.8 By application of the above test, it is clear that Heading 2106 being a residuary and miscellaneous entry is automatically cancelled for considering the classification of impugned good.

14. The appellant finally submitted that the Impugned Ruling passed by Authority suffers from the above-mentioned defects. Accordingly, the Impugned Ruling is liable to be discharged and impugned good classifiable under Heading 1517 on this ground alone.

Whether Appeal filed in time:

15. In terms of Section 100(2) of the Act, an appeal against Advance Ruling has to be filed within thirty (30) days from the date of communication thereof to the applicant. As seen from record, the signed copy of the impugned order dated 30.08.2018 was received by the appellant on 07.12.2018 as mentioned in the appeal. Appellant filed the present appeal on 31.12.2018. Accordingly, the appeal is found to be filed within prescribed time.

Record of Personal Hearing.

16. The personal hearing was fixed for 30.05.2019. The case could not be taken up for hearing on given date due to DETCs meeting and thus the same was adjourned to 25.07.2019. Due to GST Council meeting at New Delhi, the

case could not be taken up and adjourned to 07.08.2019. Finally, personal hearing was held on 07.08.2019. Advocates Shri Puneet Bansal, Miss. Anshika Agarwal, Sh. Rakesh Gupta and ETO, Panipat Shri Ajay Kumar, attended the hearing on the fixed date and time.

16.1 During the hearing the appellant while reiterating the submissions made in their appeal papers put forth that the basic emphasis of their submissions was that impugned goods are correctly classifiable under Heading No. 1517.

16.2 Shri Puneet Bansal, Advocate emphasized that as per HSN Explanatory Notes, the product "Cooking Delite" is classifiable under Heading 1517 of Customs Tariff Act. He submitted that HSN Explanatory Notes for Heading 1516, *inter alia*, provides that *"The heading includes the products as described above, even if they have a waxy character and even if they have been subsequently deodorized or subjected to similar refining processes, and whether or not they can be used directly as food. But it excludes hydrogenated etc. fats and oils and their fractions which have undergone such further preparation for food purposes as texturation (modification of the texture or crystalline structure) (Heading 1517)"*.

16.3 As per HSN Explanatory Notes, this heading covers margarine and other edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this Chapter, other than those of heading 15.16. The Explanatory Notes further provides that the products of this heading, the fats or oils of which may previously have been hydrogenated, may be worked by emulsification (e.g., with skimmed milk), churning, texturation (modification of the texture or crystalline structure), etc., and may contain small quantities of added lecithin, starch, colouring, flavouring, vitamins, butter or other milk fats (subject to the restrictions in Note 1 (c) of this Chapter).

16.4 As per the HSN, margarine is a plastic mass, generally yellowish, obtained from fats or oils of animal or vegetable origin or from a mixture of these fats or oils. It is an emulsion of the water-in-oil type, generally made to resemble butter on appearance, consistency, colour, etc.

16.5 The Appellant submitted that impugned good is similar to margarine insofar as it is a preparation of vegetable oil in the nature of an emulsion of water-in-oil type and it resembles a regular cream which, like butter, is a dairy product. Similar to margarine which imitated butter by using vegetable fat instead of dairy fat, the impugned product imitates cream by using vegetable fat instead of dairy fat.

16.6 Shri Bansal submitted that Heading 1517 covers preparations of vegetable fats. Some of such vegetable fat-based preparations such as margarine are actually low cost substitutes for dairy products such as butter. Thus, it is evident that Heading 1517 covers substitutes of dairy products that are made by emulsifying vegetable fat in water within its ambit. In other words, 'Dairy Analogues' made from vegetable/animal fats are covered under Heading 1517.

16.7 He also heavily relied upon the case of Aluva Sugar Agency vs State of Kerala reported as 2011 (272) ELT 649 (S.C.) and Parisons Foods Pvt Ltd vs Joint Commissioner of Commercial Taxes, Thiruvananthapuram 2018 (11) GSTL 44(Ker.).

Discussion and Findings:

17. We have considered the material on record including the grounds of appeal, written as well as oral submissions, statutory provisions etc. In terms of Section 101(1) of the Act, this Appellate Authority is mandated to pass such order as it thinks fit, confirming or modifying the ruling appealed against.

18. We now proceed to record our discussions and findings.

18.1 The appellant contented that the product "cooking cream" is primarily based on vegetable fat as its main ingredient to which other ingredients are added, forming a mixtures/preparation of vegetable fat. Hence, it is classifiable under Heading 1517 which covers "Edible mixtures or preparation of vegetable fats or vegetable oil or of fractions of different vegetable fats or vegetable oil of this Chapter, other than edible fats or oils or their fractions of heading 1516" and chargeable to 5% IGST as specified under S. No. 89 of Schedule-I of Notification No. 1/2017-Integrated Tax.

18.2 The question for determination in this appeal is whether the product "cooking cream" manufactured/ supplied by the appellant merit classification under Heading 1517 as claimed by the appellant or classifiable under Heading 2106 as determined by the Authority for Advance Ruling, Haryana.

18.3. We found that for any given product, the name, character and use are three important ingredients which decide the classification of any given product. Hence we proceed to examine the classification of impugned item, keeping in mind the above guiding factors.

18.4 The impugned item is being sold by the appellant as "Cooking Cream" under the name 'Cooking Delite' consisting of water, Edible Vegetable Fat

(hydrogenated palm kernel oil), Milk Solid, Sugar along with premixes of emulsifiers and stabilizers. It is ideal for use in truffles, soups, sauces, gravies *etc* and ~~all types of cuisines~~. Vegetable fats and oil fall under chapter heading 1517, which reads as under:-

CHAPTER 15	
Animal or vegetable fats and oil and their cleavage products; prepared edible fats; animal or vegetable waxes	
1517	MARGARINE; EDIBLE MIXTURE OR PREPARATIONS OF ANIMAL OR VEETABLE FATS OR OILS OR OF FRACTIONS OF DIFERENT FATS OR OILS OF THIS CHAPTER, OTH ER "AN EDIBLE FATS OR OILS OR THEIR FRACTIONS OF HEADING 1516
1517 10	-Margarine, excluding liquid margarine
1517 10 10	-- Of animal origin
	--- Of vegetable origin
1517 10 21	----Edible grade
1517 10 22	---- Linoxyn
1517 10 29	---- other
1517 90	---- other
1517 90 10	--- Sal fat (processed or refined)
1517 90 30	---Imitation lard or animal origin
1517 90 40	--- Imitation lard of vegetable orgin
1517 90 90	---other

We have gone through the HSN Explanatory notes to chapter heading 1517 which provides as under:

15.17- Margarine; edible mixture or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this Chapter, other than edible fats or oils or their fractions of heading 1516 (+).

1517.10- Margarine, excluding liquid margarine

1517.90-Other

This heading covers margarine and other edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this Chapter, other than those of heading 15.16. They are generally liquid or solid mixtures or preparations of:

- (1) Different animal fats or oils or their fractions;
- (2) Different vegetable fats or oils or their fractions; or
- (3) Both animal and vegetable fats or oils or their fractions.

The products of this heading, the fats or oils of which may previously have been hydrogenated, may be worked by emulsification (e.g., with skimmed milk), churning, texturation (modification of the texture or crystalline structure), etc., and may contain small quantities of added lecithin, starch, colouring, flavouring, vitamins, butter or other milk fats (subject to the restrictions in Note 1 (c) of this Chapter).

The heading also covers edible preparations made from a single fat or oil (or fractions thereof), whether or not hydrogenated, which have been worked by emulsification, churning, texturation, etc.

The heading includes hydrogenated, inter-esterified, re-esterified or elaidinized fats and oils or their fractions, where modification involves more than one fat or oil.

The principal products of this heading are:

- (A) **Margarine** (other than liquid margarine, which is a plastic mass, generally yellowish, obtained from fats or oils of animal or vegetable origin or from a mixture of these fats or oils. It is an emulsion of the water-in oil type, generally made to resemble butter in appearance, consistency, colour, etc.
- (B) **Edible mixture or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this Chapter, other than edible fats or oils or their fractions of heading 15.16; for example, imitation lard, liquid margarine and shortenings** (produced from texturised oils or fats).

18.5 We have observed that the product "Cooking Cream" or to say 'Cooking Delite' consists of water, Edible Vegetable Fat (hydrogenated palm kernel oil), Milk Solid, Sugar along with premixes of emulsifiers and stabilizers.

18.6 It is the case of the appellant that the 'Cooking Delite' manufactured by it with the above combination of ingredients falls under the category of Margarine; edible mixture or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of Chapter 15, other than edible fats or oils or their fractions of heading 1516, falls under Heading 1517. The HSN explanatory notes to Chapter Heading 1517 has clearly provides that the products of this heading, the fats or oils of which may previously have been

hydrogenated, may be worked by emulsification (e.g., with skimmed milk), churning, texturation (modification of the texture or crystalline structure), etc., and may contain small quantities of added lecithin, starch, colouring, flavouring, vitamins, butter or other milk fats (subject to the restrictions in Note 1 (c) of this Chapter). By any stretch of imagination 'Sugar' cannot be understood to be included in the above combination of ingredients.

19. The Appellant contended that impugned ^{Kew}good is similar to margarine insofar as it is a preparation of vegetable oil in the nature of an emulsion of water-in-oil type and it resembles a regular cream which, like butter, is a dairy product. Similar to margarine which imitated butter by using vegetable fat instead of dairy fat, the impugned product imitates cream by using vegetable fat instead of dairy fat. In their defense ^{pl}appellant relied upon the decision in the case of *Aluva Sugar Agency vs State of Kerala* 2011 (272) ELT 649 (SC).

19.1 We have noted that HSN Explanatory notes discussed supra clearly provides that what other ingredients, besides fats or oils may contain in small quantities to classify the product under Heading 1517. Sugar as ingredient has not been found mentioned in the HSN Explanatory Notes in respect of preparations of vegetable oil in the nature of an emulsion of water-in-oil, though it may resemble like a regular cream.

19.2 We found that in the case of *Aluva Sugar Agency* case cited supra, Hon'ble Supreme Court of India has held that "*Margarine - Made only from vegetable oils - Used exclusively as raw-material by bakeries and confectionaries makers - Though margarine was not consumed directly and not used for normal cooking as other oils like coconut, sunflower, etc., fact that it was used for preparing bakery items consumed by human beings made it edible - Having around 80% fat, and being in nature of oil, it has to be considered as edible oil.*

Margarine is a generic term and it is used as a substitute for butter. It is used in preparation of food articles and specially used for preparing bakery products. For the purpose of manufacturing margarine, refined and/or hydrogenated oils of sun-flower, soyabean, cotton seed, palmoline, palm and sesame oils are used. Moreover, vegetable oils, salt, permitted emulsifiers and stabilizers are also used for manufacturing margarine. So far as the margarine manufactured by the appellant is concerned, it is made only from vegetable oils as stated by the appellant and as borne out from the record. The margarine manufactured by the appellant is exclusively used as raw-material by bakeries and those who manufacture confectionaries."

19.3 As per the HSN Explanatory Notes for the purpose of Heading 0405:

(a) the term "butter" means natural butter, whey butter or recombined butter (fresh, salted or rancid, including canned butter) derived exclusively from milk, with a milk fat content of 80% or more but not more than 95% by weight, a maximum milk solids-not-fat content of 2% by weight and a maximum water content of 16% by weight. Butter does not contain added emulsifiers, but may contain sodium chloride, food colours, neutralizing salts and cultures of harmless lacticacid-producing bacteria.

19.4 It may be seen that butter consists milk fat contents of 80% or more but not more than 95% by weight. In the case of Aluva Sugar Agency also the fat contents of Margarine is around 80% and thus the same is used as substitute of butter. However, in the case before us the fat contents is only 26%. Thus the product 'Cooking Cream' cannot be said to be a substitute or imitation of butter. Thus Cooking Cream is not similar to Margarine and hence the case law relied upon by the appellant holds no water.

20. The appellant further relied upon the decision of Kerala High Court in the case of Parisons Foods Pvt Ltd vs Joint Commissioner of Commercial Taxes, Thiruvananthapuram reported at 2018 (11) GSTL-44(Ker.). In this case the assessee was engaged in manufacture of 'bakery shortening', a product derived from a preparation of mixture of hydrogenated vegetable oils. The Authorities held that the product was correctly classifiable under Heading 1517 covering edible mixture or preparations of animal or vegetable fats or oils. The High Court upheld the above clarification on the ground that bakery shortening is prepared by mixing together various vegetable oils which provide its essential character. Thus, it constituted a preparation of hydrogenated vegetable oils.

20.1 We have gone through the aforesaid case law. We have observed that in the said case various hydrogenated vegetable oils (vanaspati) and liquid refined vegetable oils were blended together in a blending vessel; and all the fractions of oil were properly melted and additives (like Sesame Oil, Vitamin A and Vitamin D) were added to the mixture. The mixture so formed was kept under agitation for 45 minutes to get a homogenous mass. The vanaspati was passed through Rotators and Crystallizers which churned the product from 45°C to 20°C; and the chilled mixture of vanaspati so formed was called Bakery Shortening which was then packed in 15 Kg packs and kept for tempering in air-conditioned room for a day. We found that the additives in the said case were only those specified in HSN Explanatory notes. No other additives or ingredients outside the scope of HSN Explanatory Note of Heading 1517 were available, However, in the case before us we found that appellant is using Sugar as an ingredient which does not found place in the list of ingredients

described in HSN Explanatory Notes of Heading 1517. Thus, the aforesaid case law of Parisons Foods Pvt Lts is not applicable to the instant case. Moreover, the case of Parisons Foods Pvt Ltd relied upon by the appellant has not attained the finality and pending with the Apex Court.

21. Thus, we are of the considered view that the product 'Cooking Delite' is not classifiable under Heading 1517 of Customs Tariff Act.

22. Now the question before us is that if the impugned goods do not qualify to be classified under Heading 1517 of Customs Tariff Act, as claimed by the appellant then which is the appropriate Chapter Heading wherein the product in question is classifiable. We find that Authority for Advance Ruling in its ruling has classified the impugned product under Heading 2106 of Customs Tariff Act, 1975.

23. We examined the impugned product vis-à-vis Chapter 2106. We observe that Chapter 21 essentially covers 'Miscellaneous Edible Products'. Obviously, the term 'Miscellaneous' indicates that this particular chapter would contain all such edible products which are not specifically covered elsewhere under the Tariff. The Chapter Headings further describes various edible preparations such as extracts of Coffee, tea, Yeast, Soups, broths, Sauces etc. under Heading 2101 to 2105. Further as is the convention, Heading 2106 has been given to include all those items which are not elsewhere specified. Furthermore, 2106 further sub-divides and classifies various edible items like Protein Concentrates, Pan Masala, Sharbats, Supari, Custard Powder etc. under Sub-headings 2106 10 00 to 2106 90 80 and to conclude there is a residual entry as 'Others' under 2106 90 99.

23.1 Chapter Note 5 of Chapter 21 provides that "Heading 2106 (except tariff items 2106 90 20 and 2106 90 30), *inter alia*, includes:

- (a)
- (b) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption;
- (c)
- (d)

Further, Chapter Note 6 of Chapter 21 reads as under:

"Tariff item 2106 90 99 includes sweet meats commonly known as "Misthans" or "Mithai" or called by any other name. They also include products commonly known as "Namkeens", "mixtures", "Bhujia",

“Chabena” or called by any other name. Such products remain classified in these sub-headings irrespective of the nature of their ingredients.

23.2 Simultaneous perusal of the aforesaid chapter notes of Chapter 21 and on going through the details of the impugned item, the impugned item being mixture of chemicals and foodstuffs, merits classification under chapter heading 21069099 which refers to food preparations not elsewhere specified or included as it does not remain fraction of palm oil. Here it is important to take note of the General Rules for the interpretation of tariff Rule 2 (b) provides that classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

23.3 Rule 3 (a) provides that when by application of Rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be made under the heading which provides the most specific description compared to headings providing a more general description.

23.4 In the instant case, the impugned item is mixture of vegetable oil and other food stuffs. After the manufacturing process, as detailed in the appeal, it is observed that individual identity of all the mixtures is lost and what, emerges is totally a different item, a new product having different name, character and use. Thus, cooking cream cannot be said to be merely a mixture of vegetable oil with other ingredient, but a totally new product having different name character and use. Under such circumstances, it does not merit classification under chapter heading 1517, rather merits classification under chapter heading 21069099, as "preparations not elsewhere specified or included" as it does not remain fraction of palm oil.

23.5 Further, we have also noted that the Authority for Advance Ruling in its ruling has discussed the issue as to how the impugned goods merit classification under Heading 2106. Authority for Advance Ruling discussed in detail that WCO- HS Committee, US International Trade Commission Rulings and Harmonised Tariff Schedule has classified the product under Heading 2106 90. Authority for Advance Ruling also discussed in its findings that import data of India, as regard to import of "non-dairy whipping/topping cream at various Indian ports was also checked on various websites and as per this import data, non dairy topping/whipping cream is being imported by classifying under chapter sub-heading 21069099.

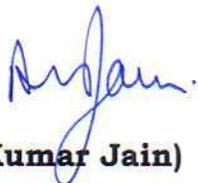
24. Thus, in view of the above discussions and findings, the impugned item merits classification under chapter heading 2106 of the schedule to the

Customs Tariff Act, 1975 and chargeable to GST accordingly. We also found that the Advance Ruling Authority has gone through the matter in detailed way and passed a well reasoned speaking order and hence, there is no reason to interfere with the order.

ORDER

25. In view of the above discussion we find no infirmity in the ruling pronounced by the Haryana Authority for Advance Ruling. The appeal thus fails and stands disposed accordingly.


(Dr. Amit Kumar Agrawal)
Member


(Anil Kumar Jain)
Member